Office Supreme Court U. S.
FILED
OCT 9 1899
JAMES H. McKENNEY,
Clerk

No. 324. 80

Brief of Guthrie, Fentress & Mayes for P. E. (mo.)

Supreme Court of the United States.

OCTOBER TERM, 1899.

Filed Oct. 9, 1899.

No. 324.

ON MOTION TO DISMISS OR AFFIRM.

YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY ET AL.,
Plaintiffs in error,
vs.
WIRT ADAMS, State Revenue Agent.
In error to the Supreme Court of Mississippi.

BRIEF ON BEHALF OF PLAINTIFFS IN ERROR IN OPPOSITION TO THE MOTION TO DISMISS OR AFFIRM.

WILLIAM D. GUTHRIE,
JAMES FENTRESS,
EDWARD MAYES,
NOEL GALE,
Of counsel for plaintiffs in error.

WASHINGTON, October 9, 1899.

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 324.

YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY ET AL.,
Plaintiffs in error,
vs.
WIRT ADAMS, State Revenue Agent.

In error to the Supreme Court of Mississippi.

BRIEF OF ARGUMENT FOR PLAINTIFFS IN ERROR IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM.

This suit involves the construction of a part of the same legislative charter that was before the court in *Yazoo Railroad Co. v. Thomas*, 132 U. S. 174, 184. Indeed, the motion states "that this action was brought on the authority of" that case. The charter is that of the Yazoo and Mississippi Valley Railroad Company, one of the plaintiffs in error here,[1] approved February 17, 1882, and the provisions in question are contained in the last clause of section 8 of that act. The section is as follows:

> "That in order to encourage the investment of capital in the works which said company is hereby authorized to construct and maintain, and to make certain in advance of such investment, and as an inducement and consideration therefor, the taxes and burdens which this State will and will not impose thereon, it is hereby declared that said company, its stock, its railroads and appurtenances, and all its property in this State, necessary or incident to the full exercise of all the powers herein granted—not to include compresses and oil mills—shall be exempt from taxation for a term of twenty years from the com-

[1] Laws Mississippi, 1882, pp. 838, 847.

pletion of said railroad to the Mississippi river, but not to extend beyond 25 years from the date of the approval of this act; and when the period of exemption herein prescribed shall have expired, the property of said railroad may be taxed at the same rate as other property in this State. All of said taxes to which the property of said company may be subject in this State, whether for county or State, shall be collected by the Treasurer of this State and paid into the State Treasury, to be dealt with as the Legislature may direct; *but said company shall be exempt from taxation by cities and towns.*"

The court had before it in the *Thomas* case, the exemption claimed in respect of state and county taxes. It was held that the railroad company was not entitled to the exemption because it had not yet completed its railroad to the Mississippi River. The controversy here has to do with the exemption from "taxation by cities and towns" found in the concluding portion of the section, which exemption the court below, in construing the charter, has held to be likewise conditional.

In the *Thomas* case, a motion to dismiss was made upon the same ground as that urged in the case at bar. The motion was overruled, Mr. Chief Justice Fuller saying:

"The taxes in question were assessed under the act of 1888, and if the charter of the company, which became a law on the 17th of February, 1882, inhibited such taxation, then this court has jurisdiction to re-examine the conclusion reached. Although by the terms of the act of 1888 the taxes therein referred to were not to be levied as against a railroad exempt by law or charter, yet the Supreme Court held that this company is not exempt, and is embraced within the act; so that if a contract of exemption is contained in the company's charter, then the obligation of that contract is impaired by the act of 1888, which must be considered, under the ruling of the Supreme Court, as intended to apply to the company. The result is the same, although the act of 1888 be regarded as simply putting in force revenue laws existing at the date of the company's charter, rather than itself imposing taxes, for if the contract existed those laws became inoperative, and would be reinstated by the act of 1888. The motion to dismiss the writ of error is therefore overruled."

In the present case, the Chief Justice of Mississippi, although concurring in the judgment under review, has certified in the clearest language that a Federal question was involved below.[1]

Upon the merits, the plaintiffs in error expect to be able to show that the charter contract confers an unconditional exemption "from taxation by cities and towns," as its language purports to do, and that the legislature intended to draw a distinction between taxation for state purposes and "taxation by cities and towns," the former being made conditional on completion of the railroad to the Mississippi, as decided by this court in the *Thomas* case, the latter being made absolute and unconditional.

The people and the legislature of Mississippi have repeatedly treated the two powers of taxation as differing in their nature, and have prescribed regulations as to municipal taxation differing widely from the regulations as to county and state taxation. Constitution of 1890, Sections 181, 182, 192; Section 2956 of the Annotated Code of 1892; Revenue Law of 1890, Laws of 1890, pp. 9, 11; Revenue Law of 1894, Laws of 1894, p. 25.[2]

Many acts are cited in the appendix which show the broad distinction constantly drawn in Mississippi between

[1] STATE OF MISSISSIPPI, In the Supreme Court. } March Term, 1899.

YAZOO AND MISSISSIPPI VALLEY RAILROAD CO., ET AL. Appellants,

WIRT ADAMS, State Revenue Agent, Appellee.

I, Thomas H. Woods, Chief Justice of the Supreme Court of the State of Mississippi, at the present time and upon the argument and the hearing of the above entitled appeal, do hereby certify:

1. That, upon said argument and hearing the validity of legislation of the State of Mississippi, subsequent to the statute of February 17, 1882, was drawn in question by the said Yazoo and Mississippi Valley Railroad Company, and said John Hart and Edward Mayes, on the ground of such legislation being repugnant to section 10; article I. of the Constitution of the United States, *in such that* legislation impaired the obligation of a contract between the State

[2] Appendix, pp. I., III., IV.

DARK PAGE BLEED THRU

the imposition and collection of state and county taxes upon the one hand and municipal taxes upon the other hand. Thus, it will be seen, railroad companies might pay a privilege tax in lieu of the ordinary *ad valorem* taxes, excepting as to municipal taxes; and street railroads and machine shops might be exempted from municipal taxation.

Perhaps the strongest evidence of the intention in the legislation of 1882 is to be found in the difference in phraseology between the charter under consideration and other charters granted at the same session. The charters of the Yazoo and Mississippi Valley and the Canton, Aberdeen and Nashville Railway Companies, passed upon the same day, contain identical provisions as to taxation and exemption; and this language was used by the legislature in several other charters granted at that session (see Appendix). But when the same legislature decided to limit the exemption from municipal taxation in point of time, it inserted in certain other charters provisions expressly restricting such exemption. In one case, the proviso was as follows: "*Provided*, the exemption in towns and cities shall not be more

---

of Mississippi and the Yazoo and Mississippi Valley Railroad Company as embodied in the charter of the said Company, and that the decision of the said Supreme Court of Mississippi was in favor of the validity of such legislation.

2. That upon the said argument and hearing, the said Yazoo and Mississippi Valley Railroad Company set up a claim and contract right as conferred by the eighth section of the charter of the said Railroad Company to exemption to taxation by municipalities, and set up a claim that such contract right was protected against impairment by the Constitution of the United States, and the decision of the Supreme Court of the State was adverse to such claim of contract right and held that the right claimed did not exist. Wherefore, that it was not impaired by the subsequent legislation under and by virtue of which the State Revenue Agent sought to collect the taxes demanded in the suit at bar.

* * * * * * *

In witness whereof, I have hereunto subscribed my name, this 6th day of May in the year one thousand and eight hundred and ninety-nine.

THOMAS H. WOODS,
Chief Justice Supreme Court.

than twenty years."[1] In another act, the proviso was: "*Provided*, that this act shall not prevent the city of Meridian from levying municipal taxes on said railroad and its property, after the exemption period of twenty years shall have expired."[2] In still a third charter, the exemption from municipal taxation was thus limited: "*Provided*, the municipal authorities of the city of Meridian may impose such taxes on said railroad company and its property of every description as may be imposed on other railroads and property of like character after the said period of exemption of twenty years have expired."[3]

It thus appears that not only did the constitution sanction a distinction between these forms of taxation, and the legislature repeatedly make use of such a distinction, but also that the very legislature which passed the charter now under consideration, whenever it desired to limit the exemption from municipal taxation, did so in unmistakable terms. For many years, the practical construction was that the municipal taxation was unconditional; and the present position of court and officials is a departure and change of front. Surely, without elaborating further, it must be reasonably apparent that, on the merits, there is a serious question for the consideration of this court.

The present motion to dismiss is based upon three grounds: That the record does not show that a Federal question was so directly involved that the state court could not have given judgment without deciding it; that no Federal question was involved; and that the "pretended" Federal question was not duly raised in point of time. These grounds will be discussed in the order in which they are stated in the moving papers.

[1] Laws Mississippi, 1882, c. 551, sec. 27, p. 975.
[2] Laws Mississippi, 1882, c. 549, sec. 22, p. 959.
[3] Laws Mississippi, 1882, c. 568, sec. 22, p. 1065.

I.

The Federal question in the record.

The suit, so far as it relates to taxes levied since 1892, was based upon the provisions of Chapter 93 of the Annotated Code of 1892 entitled "Municipalities," which confers the taxing power upon cities, towns and villages in Mississippi and regulates its exercise. The provisions referred to are printed in an appendix to this brief. The suit was, therefore, as to those taxes, clearly an attempt to enforce a statute of the State, subsequent to the charter of 1882, within the direct ruling in *Yazoo Railroad Co.* v. *Thomas*, 132 U. S. 174, 184. As to the taxes prior to 1892, namely, 1886 to 1891, the right to levy them was conferred in the case of at least four towns by statutes enacted subsequent to 1882, as shown in the appendix; and the same rule must apply to them. Therefore, at most, the taxes of only six municipalities were levied under legislation enacted prior to 1882.

Upon the merits, there was absolutely no controversy below except as to the construction of the charter and the contract rights of the company.

The third and fourth pleas interposed by the principal plaintiff in error in the trial court specifically referred to its charter (special record, pp. 27, 28) and set up the Federal question by alleging that, under the charter, its property was exempt from municipal taxation; that the power to make such exemption had been judicially recognized and declared; and that such exemption was a "part of the charter contract of the defendant as between it and said State," etc., etc. (*id.*, p. 28). These pleas were demurred to, and the demurrers were sustained (*id.*, pp. 28, 29, 30). The Federal question arising under the contract clause of the Federal Constitution thus appeared upon the face of

the pleadings and was expressly passed upon, and the decision against the right claimed was affirmed by the judgment, to reverse which this writ of error was sued out. From beginning to end, the defense was under the contract clause.

The contention of the defendant in error upon this branch of the motion seems to be that the Federal right or constitutional point must be expressly "pleaded" in so many words. In support of this ground, reliance is placed upon cases belonging to the third class mentioned in section 709 of the Revised Statutes, in which the final decree of a state court may be re-examined in this court. The jurisdiction in the case now before the court is, however, under the second class. It is, of course, well established that in cases which belong to the second class—that is to say, where "is drawn in question the validity of a statute of, or an authority exercised under a statute of, any State on the ground of its being repugnant to the Constitution," etc.—it is not necessary that the Federal question should be specially set up or claimed in order to give this court jurisdiction, but it is sufficient that it appear that the Federal question was involved in the case, and that the case could not have been determined without deciding it. This well-established rule of practice was most emphatically reiterated at the last term in *Water Power Co.* v. *Street Railway Co.*, 172 U. S. 475, 485, in which case Mr. Justice Brown, in referring to a state of facts quite analogous to those now presented, used the following language:

> "While no special mention is made in the complaint of the Constitution of the United States, the whole theory of the plaintiff's case taken in connection with the answer is that the rights which it acquired to the five hundred horse power in question under the act of 1887 were impaired by the subsequent

act of December 24, 1892, ratifying and approving the contract of the board of directors of the state penitentiary with the defendant. The contract of the defendant is set up in the complaint, and although the act of December, 1892, ratifying the same is not set up there, it appears in the answer and is relied upon as validating the contract; so that, reading the complaint and answer together, the question whether the contract of the plaintiff was impaired by subsequent State action appears on the face of the pleadings. * *

"While, in so holding, the court disposed of the case upon the construction of the contract under which the plaintiff asserted its right, such construction is no less a Federal question than would be the case if the construction of the contract were undisputed, and the point decided upon the ground that the subsequent act confirming the contract with the defendant did not impair it. The question in either case is whether the contract has been impaired, and that question may be answered either by holding that there is no contract at all, or that the plaintiff had no exclusive rights under its contract, or granting that it had such exclusive rights, that the subsequent legislation did not impair it. These are rather differences in the form of expression than in the character of the question involved, and this court has so frequently decided, notably in the very recent case of *McCullough* v. *Virginia*, 172 U. S. 102, that it is the duty of this court to determine for itself the proper construction of the contract upon which the plaintiff relies, that it must be considered no longer as an open question, *N. O. Water Works* v. *La. Sugar Co.*, 125 U. S. 18; *Bridge Proprietors* v. *Hoboken Co.*, 1 Wall. 116.

"TO THE ARGUMENT THAT THE FEDERAL RIGHT WAS NOT 'SPECIALLY SET UP AND CLAIMED' IN THE LANGUAGE OF REVISED STATUTES, SECTION 709, IT IS REPLIED THAT THIS IS NOT ONE OF THE CASES IN WHICH IT IS NECESSARY TO DO SO."

II.

THE FEDERAL QUESTION WAS NECESSARILY INVOLVED.

The theory of the defendant in error evidently is that the existence of the contract is a question upon which this court, whatever its own opinion may be, must take the view of the court below, because the construction of the constitution and statutes of Mississippi is in some measure involved. It is urged by him that the case comes

within the general rule that this court adopts the construction of state laws by state courts; but the one exception to this rule—namely, when the contract clause of the Federal Constitution is involved—has been overlooked by counsel, although so frequently declared by this court and recently reiterated in *Douglas* v. *Kentucky*, 168 U. S. 488, 500; *Chicago &c. Railroad* v. *Nebraska*, 170 U. S. 57, 68; *McCullough* v. *Virginia*, 172 U. S. 102, 109; and *Water Power Co.* v. *Street Railway Co.*, 172 U. S. 475, 484.

In all cases arising under the contract clause of the Federal Constitution, it is the prerogative and duty of this court to inquire and judge for itself (1) whether a contract has or has not been made and is still in existence; and (2) whether the obligation of that contract has been impaired. In cases involving rights which do not arise under the contract clause of the Federal Constitution, this court may follow the decisions of the state courts as to the construction of local constitutions and laws; but, whenever the Federal question arises under the contract clause, the construction of the local constitutions and laws is a matter which must be determined by this court according to its own views.

If this doctrine be applied, there will be no difficulty in perceiving that the decision below clearly presented a Federal question under the contract clause. The state court could not have held the plaintiffs in error liable for the taxes in suit without deciding either (1) that the provisions of section 8 did not constitute a contract of exemption, or (2) that the subsequent tax legislation of the State did not impair the obligation of that contract. *Bridge Proprietors* v. *Hoboken Co.*, 1 Wall. 116, 141; *Furman* v. *Nichol*, 8 Wall. 44, 55; *Murray* v.

Charleston, 96 U. S. 432, 441; *Smith* v. *Greenhow*, 109 U. S. 669, 670; *Great Western Telegraph Co.* v. *Purdy*, 162 U. S. 329, 334; *Chicago, Burlington, &c., R'd* v. *Chicago*, 166 U. S. 226, 231; *Missouri, Kansas & Texas Railway* v. *Haber*, 169 U. S., 613, 621.

As Chief Justice Waite said in *Chapman* v. *Goodnow*, 123 U. S. 540, 548:

> "We are aware that a right or immunity set up or claimed under the Constitution or laws of the United States may be denied as well by evading a direct decision thereon as by positive action. If a Federal question is fairly presented by the record, and its decision is actually necessary to the determination of the case, a judgment which rejects the claim, but avoids all reference to it, is as much against the right, within the meaning of § 709 of the Revised Statutes, as if it had been specifically referred to and the right directly refused."

The defendant in error contends that the decision of the court below as to the true construction of that portion of section 8 relating to the exemption from municipal taxes simply involved a construction of a state statute unimpaired by any subsequent legislation (defendant's brief, p. 7). In other words, the position is that the decision of a state court, as to whether a contract was ever made, is conclusive upon this court. This is not the rule. The question as to the existence of a contract as well as its true construction has been in all cases determined by this court independently of the decisions of the state court, and in some cases in direct opposition to the rulings of those tribunals. *Louisville & Nashville R. R. Co.* v. *Palmes*, 109 U. S. 244, 256; *Vicksburg, &c., Railroad Co.* v. *Dennis*, 116 U. S. 665, 667; *Given* v. *Wright*, 117 U. S. 648, 655; *Mobile & Ohio Railroad* v. *Tennessee*, 153 U. S. 486, 492; *McCullough* v. *Virginia*, 172 U. S. 102, 109; *Water Power Co.* v. *Street Railway Co.*, 172 U. S. 475, 487. In a number of the foregoing cases

motions were made to dismiss upon the ground that the construction by the state court of its own constitution and laws was binding upon this court, but in every instance the motion to dismiss was denied. In no class of cases has this court oftener exercised its power to determine for itself the existence of an alleged contract than in the long line of decisions involving so-called exemptions or immunities from taxation.[1]

In the case at bar, the court below determined that there was no contract by which the plaintiff in error was exempted from municipal taxation, although the pleadings expressly alleged the existence of such a contract. This court is now asked to exercise its undoubted jurisdiction to review this determination for itself, and, if it finds that there was such a contract, then to determine whether the subsequent legislation of Mississippi has impaired its obligation. To deny the power and duty to so determine the existence of the alleged contract of exemption would render ineffectual a great measure of the jurisdiction which it was deemed necessary to confer upon this tribunal.

III.

THE FEDERAL QUESTION WAS DULY RAISED IN POINT OF TIME.

The declaration originally filed in this suit in the circuit court sought a recovery for the taxes for the years 1893, 1894, 1895 and 1896 only. These taxes were levied under the act of 1892. To this declaration a demurrer was interposed, on the ground that the declaration was not sufficient in law. With the issue thus framed, it was, of course, competent for the railroad company to urge not only that its charter constituted a contract ex-

[1] The following cases involved the creation or interpretation of the alleged contract: *East Hartford* v. *Hartford Bridge Co.*, 10 How. 511, 532; *Chesapeake, etc., R. R. Co.* v. *Virginia*, 94 U. S. 718, 722; *Railroad Companies* v. *Gaines*,

empting it from municipal taxation, but also that this contract was impaired by the subsequent legislation of 1892, upon which the declaration was based.[1] The decision and judgment of the trial court were in favor of the railroad company upon this issue. Inasmuch as the appeal to the Supreme Court of Mississippi was taken by the State Revenue Agent, it was unnecessary and impossible for the railroad company, by assignment of error or in any other form, to raise any Federal question; and, as the decision of the supreme court negatived the existence of the contract, that court, of course, did not consider any question of its impairment, for according to its view there was no contract right to impair.

When the case was returned to the circuit court for a new trial, an amended declaration was filed, in which were included the taxes for the years 1886, 1887, 1888, 1889, 1890, 1891 and 1892, as well as those for 1897, so that the amended declaration included all taxes from 1886 to 1897 (special record, p. 16). The railroad company promptly and in detail set up the contract contained in section 8 of its charter, under which the exemption was claimed. It followed of necessity that, if such contract existed and the subsequent legislation impaired it, the railroad company was entitled to judgment.

---

97 U.S. 697, 707; *Railroad Co.* v. *Commissioners*, 103 U.S. 1, 3; *Memphis Gas Co.* v. *Shelby County*, 109 U. S. 398; *Vicksburg, &c., Railroad Co.* v. *Dennis*, 116 U. S. 665, 667; *Chicago, &c., Railroad* v. *Guffey*, 120 U. S. 569; S. C., 122 U. S. 561; *Yazoo Railroad Co.* v. *Thomas*, 132 U. S. 174, 184; *McGahey* v. *Virginia*, 135 U. S. 662, 667; *Wilmington & Weldon Railroad* v. *Alsbrook*, 146 U. S. 279, 293; *Bryan* v. *Board of Education*, 151 U. S. 639, 650; *Bank of Commerce* v. *Tennessee*, 161 U. S. 134, 139; *Phœnix Insurance Co.* v. *Tennessee*, 161 U. S. 174, 175; *Douglas* v. *Kentucky*, 168 U. S. 488, 495; *Chicago &c., Railroad* v. *Nebraska*, 170 U. S. 57, 68; *McCullough* v. *Virginia*, 172 U. S. 102, 109.

[1] The similar Federal question in *Yazoo Railroad Co.* v. *Thomas*, 132 U.S. 174, 182, was raised by the demurrer of the taxing officers to the bill of complaint of the railroad company. See *Smith* v. *Greenhow*, 109 U. S. 669, 670.

A demurrer to this plea was sustained, and judgment after the trial of the general issue went against the railroad company. Upon its subsequent appeal to the supreme court of the state, the error in so sustaining the demurrer to the fourth plea which relied on the contract was specifically assigned (*id.*, p. 34). That court again held that there was no unconditional contract of exemption, and it was thus again unnecessary for it to consider the claim that there was an impairment of a contract which in the opinion of the court did not exist. It was impossible to reach a conclusion adverse to the railroad company without overruling or disregarding its contention that there was a contract, and that a subsequent statute impaired the obligation of that contract. The questions of the existence of the contract of exemption and of its impairment are, therefore, necessarily in the record, and are brought here for determination.

Even were this not a case of the second class under section 709 and were it a case within the third class under that section—that is, involving a right, title, privilege or immunity under the Constitution—the court would nevertheless hold that the Federal question had been duly raised, and that the right, title, privilege or immunity had been specially set up or claimed in a proper way and in ample time. *Chicago Life Ins. Co.* v. *Needles*, 113 U. S. 574, 579; *Spencer* v. *Merchant*, 125 U. S. 345, 352; *Kaukauna Co.* v. *Green Bay &c. Canal*, 142 U. S. 254, 269; *Roby* v. *Colehour*, 146 U. S. 153, 159; *Powell* v. *Brunswick County*, 150 U. S. 433, 439; *Chicago, Burlington &c. R'd* v. *Chicago*, 166 U. S. 226, 231; *Green Bay &c. Canal Co.* v. *Patten Paper Co.*, 172 U. S. 58, 66; *Meyer* v. *Richmond*, 172 U. S., 82, 92. The result of the first appeal in this case was not a final judgment or even

a mandate directing proceedings such as an accounting. The language was: "Judgment reversed, demurrer overruled, and cause remanded" (special record, p. 14). Either party on such new trial could make any point and advance any argument within the pleadings. The question is whether this court will consider that the Federal question has been duly set up or claimed, when, as in this case, upon a *new trial on the issues and merits*, the party specially sets up and claims the right and it is overruled and denied by the trial court as presenting no defense, which ruling is subsequently affirmed by the highest state court on the same ground. Of course, no particular form of words need be used in order to raise the Federal question, nor is it necessary that it shall be raised in the original pleading or in any pleadings or at any particular time (*Dewey* v. *Des Moines*, 173 U. S. 193, 199). All that is necessary is that before final judgment below there shall be "something in the case before the state court which at least would call its attention to the Federal question as one that was relied on by the party." It affirmatively appears by the record before this court, in addition to the certificate of the Chief Justice of Mississippi, that the Federal question was specially set up and raised in the court of original jurisdiction on the new trial, and that it was likewise before the supreme court of the state when it rendered the judgment now before this court.

The court is so familiar with the questions involved that some apology may be proper for the reference to the foregoing authorities. To distinguish the cases cited on behalf of this motion would unwarrantably increase the length of this brief. None of those cases applies to the facts appearing on this record.

The motion should be denied and the case reserved for argument and decision upon the merits.

Washington, October 9, 1899.

WILLIAM D. GUTHRIE,
JAMES FENTRESS,
EDWARD MAYES,
NOEL GALE,
Of counsel for plaintiffs in error.

APPENDIX.

I.

General Municipal Tax Legislation of Mississippi.

Annotated Code of 1892.

2925. *Powers of Mayor and Board of Aldermen.*—The mayor and board of aldermen of every city, town and village shall * * have power

2926. First. *Taxes for general revenue and improvements.*—To levy and collect taxes upon all the real, mixed, and personal property within the corporate limits taxable according to the laws of the state, the valuation of such property to be taken from the assessment-rolls of the county; For general revenue purposes, not to exceed six mills on the dollar in any one year; for general improvements, excepting improvements for which special assessments are levied, not to exceed six mills on the dollar in any one year. But a village with less than three hundred inhabitants shall never pay its officers any salary or compensation, nor levy a tax on real or personal property to exceed, for all purposes, four mills on the dollar for any one year. In cities of over five thousand inhabitants a tax, not exceeding twenty mills on the dollar, may be levied for general revenue and improvements and special school-systems each; but this shall not authorize the levy of a tax in excess of the limit on the power of taxation by such city now fixed by law, unless the same be authorized by a majority vote of the qualified electors.

2927. Second. *Taxes to pay bonds and coupons.*—To levy and collect annually taxes on all the taxable property within the municipal limits, in addition to other taxes, in a sufficient amount, for the purpose of paying the interest-coupons as they become due, on all bonds of the municipality now issued or hereafter to be issued, and the bonds themselves, which tax shall be payable only in cash or in matured coupons or bonds.

3035. *Application of the chapter.*—From and after the date that this chapter becomes operative, every municipality in the state shall exercise the powers conferred herein on the class to which it belongs, and shall be governed by the provisions thereof. But an existing municipality, by resolution of its corporate authorities, entered of record and certified to the secretary of state within twelve months after this chapter becomes operative, may elect not to come under the provisions hereof.[1] * *

[1] As matter of fact, no municipalities have elected not to come under the provisions of the code.

MUNICIPAL CHARTERS SUBSEQUENT TO YAZOO AND MISSISSIPPI VALLEY CHARTER WHICH IMPOSED TAXES.

Charter of town of Tchula, approved March 8, 1882, Laws Mississippi 1882, c. 292, sec. 6, p. 328:

"That the mayor and aldermen * * * may levy taxes on all the property of the town, real and personal, that may be subject to taxation under the general revenue laws of this State, not exceeding fifty per cent. of the amount of the State tax, to be expended for municipal purposes." * * *

Charter of Yazoo City, approved March 15, 1884, Laws 1884, c. 405, sec. 14, pp. 570, 575:

"Said council shall have power by ordinance: * * *

"TWENTY-NINTH. To levy and collect taxes on all property and privileges as hereinafter provided."

Sec. 15, p. 576. "Said council shall have power by ordinance to levy and collect annually for corporation purposes,

"ONE—A tax not exceeding one per centum *ad valorem*, on all property, real, personal and mixed, situated or belonging in said city." * * *

Sec. 16, p. 579, provides specifically for the assessment and collection of taxes.

Act incorporating town of Lexington, amended by Laws 1884, c. 473, sec. 1, p. 746:

"All the provisions of the Revised Code of 1880 of this State with reference to the assessment, levy and collection of State and county taxes, be and the same are hereby declared to be the law for the assessment, levy and collection of the taxes of the town of Lexington, * * * *provided*, the town council may by ordinance change and alter the time for the assessment, levy and collection of taxes, and provided further, that the rate of taxation for town purposes shall not exceed the rate of one-half of one per cent."

Act incorporating town of Flora, approved January 29, 1886, c. 298, sec. 10, p. 501:

"The board of mayor and aldermen shall have power from time to time to make provisions for assessing tax valuations of taxable property in said town, that the taxes so assessed if not paid shall be collected in the same manner in which State and county taxes are collected, * * * *provided*, that in no case shall the tax levied by said board of mayor and aldermen exceed one-fourth of one per cent. upon the property subject to taxation."

CONTEMPORANEOUS LEGISLATION OF 1882.

The language of the concluding sentence of section 8 of the charter of the Yazoo and Mississippi Valley Railroad Company is

found in the following charters granted at that session of the legislature:

Alabama and Mississippi Railroad Company, Laws 1882, c. 543, sec. 8, p. 871.

Tennessee and Mississippi Rivers Railroad Company, Laws 1882, c. 553, sec. 26, p. 1001.

Canton, Aberdeen and Nashville Railroad Company, Laws 1882, c. 554, sec. 8, p. 1009.

LEGISLATION IN 1884 ON SAME SUBJECT MATTER.

In the following charters granted in the succeeding session of 1884, the language of section 8 of the charter of the Yazoo and Mississippi Valley Railroad Company was followed with the significant exception that the final clause relating to taxation by cities and towns was struck out.

Mississippi River and Deer Creek Railroad Company, Laws 1884, c. 587, sec. 3, p. 919.

Memphis, Oxford and Columbus Railway Company, Laws 1884, c. 588, sec. 3, p. 920.

Terry, Brandon and Northeastern Railroad Company, Laws 1884, c. 594, sec. 3, p. 937.

Helena, Memphis and New Orleans Railroad Company, Laws 1884, c. 595, sec. 3, p. 938.

Arkansas City, Winona and Eastern Railroad Company, Laws 1884, c. 611, sec. 3, p. 971.

REFERENCES TO SOME PORTIONS OF CONSTITUTION AND LEGISLATION OF MISSISSIPPI RESPECTING MUNICIPAL TAXATION.

CONSTITUTION 1890: SEC. 181. The property of all private corporations for pecuniary gain shall be taxed in the same way and to the same extent as the property of individuals. * * * Exemptions from taxation to which corporations are legally entitled at the adoption of this constitution, shall remain in full force and effect for the time of such exemptions as expressed in their respective charters, or by general laws, unless sooner repealed by the legislature.

SEC. 182. The power to tax corporations and their property shall never be surrendered or abridged by any contract or grant to which the state or any political subdivision thereof may be a party, except that the legislature may grant exemptions from taxation in the encouragement of manufactures and other new enterprises of public utility extending over a period not exceeding five years, the time of such exemptions to commence from the date of charter if to a corporation.

SEC. 192. Provision shall be made by general laws whereby cities and towns may be authorized to aid and encourage the establishment of manufactories, gas-works, water-works, and other enterprises of public utility other than railroads, within the limits of said cities or towns, by exempting all property used for such purposes, from *municipal taxation* for a period not longer than ten years.

ANNOTATED CODE 1892, SEC. 2956 (Powers of Mayors and Aldermen of Cities and Towns):

Thirty-first. To aid and encourage the establishment of manufactories, gas-works, water-works and other enterprises of public utility other than railroads, within the corporate limits, by exempting all property used for such purposes from *municipal taxation* for a period not longer than ten years.

REVENUE LAW OF 1890.

(*Laws 1890, c. 2, p. 9.*)

SECTION 1. * * * Cities and towns are prohibited from levying or collecting any other tax on banks or on solvent credits owned by individuals or corporations, greater than 75 per cent. of the State tax.

SEC. 3 (p. 11). That the State tax for the year 1890 is hereby fixed and levied at three and one-half mills on the dollar, and for the year 1891 three mills for general purposes. * * *

REVENUE LAW OF 1894.

(*Laws 1894, c. 29, p. 25.*)

SEC. 3. The State tax for 1894 is hereby fixed at six mills on the dollar; and for the year 1895 at five mills on the dollar. * * * No city or town shall impose or collect a greater tax on banks or solvent credits than the State tax for the same year.[1]

EXEMPTIONS FROM MUNICIPAL TAXATION.

Brandon Street Railroad Company, Laws 1878, c. 300, sec. 9, p. 487.

Pass Christian City Railroad Company, Laws 1882, c. 536, sec. 10, p. 821.

City Railroad of Columbus, Laws 1882, c. 537, sec. 6, p. 82 (unlimited in time).

West Point Street Railway Company, Laws 1884, c. 59 sec. 10, p. 944.

Front and Asylum Street Railway Company (Meridian), Law 1884, c. 607, sec. 8, p. 956.

[1] Held unconstitutional in *Adams* v. *Bank*, 75 Miss. 701, 717, because violative of the "uniformity and equality clause," in that it discriminated between banks and solvent credits and other taxable property.

Memphis and Vicksburg Railroad Company, Laws 1884, c. 586, sec. 1, p. 917.

Hill City Street Railway Company (Vicksburg), Laws 1886, c. 133, sec. 7, p. 235 (unlimited in time).

The Revised Code of Mississippi of 1880, after providing for privilege taxes upon many occupations, etc. (sec. 585), provided in section 587 as follows:

"The privileges taxed, as above provided, shall not be * * * subject to taxation by any city or town to an amount exceeding fifty per centum of the tax above specified, unless expressly provided for by law." * * *

The same code provides for a fixed privilege tax upon railroads on a mileage basis, and substitutes such tax for *ad valorem* taxation for State and county purposes, but expressly excepts municipal *ad valorem* taxation (secs. 606, 607, continued by Laws 1884, c. 22, sec. 1, p. 30, and Laws 1886, c. 2, sec. 6, p. 23).